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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Natalie Noel at al.

Serial No.: 10/090,889

Filed: March 4, 2002

For: Breast Restraint for
Athletic Activity

Art Unit: 3765

Examiner: N/Y/A

Tel: N/Y/A

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Honorable Commissioner
for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING (37 CFR § 1.8)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail, in an envelope addressed to:

Commissioner for Patents
Washington, DC 20231

on Oct. 19, 2002 Dane C. Butzer
Date By: Dane C. Butzer


INFORMATION DISCLOSURE STATEMENT

Dear Assistant Commissioner:

More than one year prior to filing the present application, Applicant Natalie Noel used a prototype of the invention for her own personal enjoyment. While Ms. Noel was sometimes in public view while using the prototype, the prototype itself was always concealed from public view by a shirt or other outer garment. Thus, Ms. Noel's use of the prototype was as private as practical given the nature of the invention. "Private use of an invention is


permissible." See *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, para. 45 (Fed. Cir. 1986) (copy enclosed). The prototype was not used by any other person.

Furthermore, the claimed invention is different from the prototype. In particular, the prototype is totally inelastic. The claimed invention requires "sufficient[] elastic[ity] so as to ensure a close fit." Therefore, even if use of the prototype was a public use, the invention would still be patentable over that public use.

 In conclusion, Applicant Natalie Noel's non-public use of the patently distinguishable prototype of the invention for her own personal enjoyment does not constitute a statutory bar under 35 U.S.C. § 102(b). Nonetheless, Applicants are filing this paper out of an abundance of caution to ensure complete compliance with 37 C.F.R. 1.56.

Applicants' undersigned attorney can be reached at (614) 486-3585. All correspondence should continue to be directed to the address indicated below.

Respectfully submitted,



Dated: October 15, 2002

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3.2-03